

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Dany Sylvain

Serial No. 10/693,539

Filed: 10/24/2003

For: **CALL TRANSFER FOR AN INTEGRATED WIRELINE AND WIRELESS SERVICE USING A TEMPORARY DIRECTORY NUMBER**

Examiner: Kim, Wesley Leo

Art Unit: 2617

Mail Stop Appeal Brief – Patents

Commissioner for Patents

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Sir:

**REQUEST FOR REHEARING FOLLOWING DECISION BY THE BOARD OF
PATENT APPEALS AND INTERFERENCES PURSUANT TO 37 C.F.R. § 41.52 AND
M.P.E.P. § 1214.03**

Appellant hereby requests a rehearing pursuant to 37 C.F.R. § 41.52 and M.P.E.P. § 1214.03 following the decision issued on April 17, 2008 by the Board of Patent Appeals and Interferences (hereinafter “BPAI”). If any additional fees are required in association with this response, the Director is hereby authorized to charge them to Deposit Account 50-1732, and consider this a petition therefor.

A. Introduction

Appellant requests a rehearing pursuant to 37 C.F.R. § 41.52 and M.P.E.P. § 1214.03 following the decision issued on April 17, 2008 by the Board of Patent Appeals and Interferences. The BPAI misapprehended or overlooked several points, including, but not limited to, the scope of the present invention, the language of the claims, and the teachings of the cited references. In fact, the BPAI sustained the obviousness rejections of the Examiner on new grounds, or at the very least, affirmed the Examiner’s rejections based solely on the Abidi reference instead of the combination of Abidi and Schellinger, as asserted by the Examiner, such that Appellant never had a chance to address the argument made by the BPAI that Abidi taught or suggested all of the elements of the claimed invention. The Examiner, from the very first Office Action, admitted that Abidi did not teach or suggest each and every element of claim 1. The Examiner rejected the claims of the present invention under 35 U.S.C. § 103 (a) over the

combination of Abidi and Schellinger. In particular, the Examiner admitted that Abidi does not teach initiating a transition of the first call being connected to the mobile terminal through the wireline network via the local wireless interface to the first call being connected to the mobile terminal through the wireless network using a temporary directory number (see Office Action mailed March 28, 2006, p. 7). Now the BPAI asserts that Abidi alone does in fact teach or suggest all of the system set forth in claim 1 (Decision on Appeal mailed April 17, 2008, p. 6, hereafter “Decision”). This assertion is a new ground of rejection, or in the alternative, is based on a misapprehension or overlooking of points previously raised by Appellant. Moreover, Appellant has not had a fair opportunity to react to the argument first raised by the BPAI that Abidi alone teaches each and every element of the claimed invention, which means that the BPAI’s decision is based on a new ground of rejection.

Appellant hereby files this request for rehearing to address the points misapprehended or overlooked by the BPAI, and to address this new argument stated by the BPAI that Abidi teaches or suggests each and every element of the claimed invention. Abidi does not teach or suggest each and every element of the claimed invention. In particular, Abidi does not teach or suggest a control system adapted to “during the first call, detect the mobile terminal moving out of the communication zone” and adapted to “initiate a transition of the first call being connected to the mobile terminal through the wireline network via the local wireless interface to the first call being connected to the mobile terminal through the wireless network using a temporary directory number,” as claimed in the present invention. Schellinger also fails to teach or suggest these limitations (see Appeal Brief filed November 28, 2006, pp. 4-5 and 9-13). Thus, Abidi, alone or in combination with Schellinger, does not teach or suggest each and every element of the claimed invention. For these reasons and based on the arguments presented below, Appellant requests a rehearing and reconsideration of the Appeal Brief filed November 28, 2006, and requests that the Board reverse the Examiner and instruct the Examiner to allow all of the pending claims.

B. Points Misapprehended or Overlooked by the BPAI

1. Misunderstanding of Appellant’s Invention

Claim 1 of the present application recites a system comprising:

- a) a wireline network interface;

b) a local wireless interface providing a communication zone in which communications with a mobile terminal are possible, the mobile terminal associated with a primary directory number and adapted to communicate with the local wireless interface to facilitate a call through a wireline network and communicate with a wireless network to facilitate a call through the wireless network; and

c) a control system cooperating with the wireline network interface and the local wireless interface and adapted to:

i) establish through the wireline network a first call involving the mobile terminal by communicating with the wireline network via the wireline network interface and communicating with the mobile terminal via the local wireless interface;

ii) during the first call, detect the mobile terminal moving out of the communication zone; and

iii) initiate a transition of the first call being connected to the mobile terminal through the wireline network via the local wireless interface to the first call being connected to the mobile terminal through the wireless network using a temporary directory number.

The BPAI misstated the present invention in the Decision. First, the BPAI incorrectly stated that in the present invention, the calls through both the wireline network and the wireless network are established via a terminal adaptor (Decision, pp. 1-2). In fact, in the claimed invention, only calls established through the wireline network are established via the terminal adaptor, while calls transitioned to the wireless (cellular) network are not established through the terminal adaptor (Specification, paragraphs 0005 and 0015; and claim 1; see also Figure 1).

Second, the BPAI inaccurately stated that in the present invention, when the mobile terminal moves out of a communication zone in which a first call was established using a primary directory number, a temporary directory number for the mobile terminal is provided by the wireless network for calls between the wireline network and the wireless network (Decision, p. 2). The temporary directory number in the present invention is not provided by the wireless network for calls **between the wireline network and the wireless network**. Instead, in the present invention, the temporary directory number is provided by the wireless network and is used to **initiate a transition of the first call being connected to the mobile terminal through the wireline network via the local wireless interface to the first call being connected to the**

mobile terminal through the wireless network (see Specification, paragraphs 0005, 0006, and 0015; and claim 1; see also Figure 1). One point that was seemingly overlooked by the BPAI is that the invention as claimed recites that the temporary directory number is used to initiate a transition of a connected first call; that is, according to the claim language, **during the call**, if the mobile terminal is detected to be moving out of the communication zone of the local wireless interface, then the call is transitioned using the temporary directory number from being connected through the wireline network to being connected to the mobile terminal being connected through the wireless network. Thus, in the present invention, the call is transitioned without being dropped even if the mobile terminal moves out of the local wireless zone. Abidi, as discussed in more detail below, does not disclose using a temporary directory number to transition a call, during the call, from being established through the wireline network to being connected through the wireless network.

In particular, both independent claims 1 and 22 recite “using a **temporary** directory number” to “initiate a transition of a call connected to the mobile terminal through the wireline network to the call being connected to the mobile terminal through the wireless network.” A temporary directory number is provided by the wireless network and is contrasted from a primary directory number of the PSTN in paragraph 0005 of the Specification as filed. The temporary directory number of the present invention is assigned by the wireless switch or VLR when the mobile terminal is registering with the cellular access network and is obtained to initiate a transition of the first call being connected to the mobile terminal through the wireline network via the local wireless interface to the first call being connected to the mobile terminal through the wireless network (Specification, paragraphs 0029-0031 and 0035-0037). Abidi does not disclose or suggest using a temporary directory number in the claimed manner, as set forth in more detail below.

2. Misapprehension of Appellant’s Argument

In a related matter, the BPAI misapprehended the issue before the BPAI. The BPAI also misstated Appellant’s argument. The BPAI stated that Appellant contends that the cited references fail to teach or suggest the use of a temporary directory number (Decision, p. 4). This is not the entire contention of Appellant. Appellant’s position, as set forth in the Appeal Brief, is that the cited references, alone or in combination, did not teach or suggest using the temporary

directory number in the manner claimed, that is to initiate a transition of the first call being connected to the mobile terminal through the wireline network via the local wireless interface to the first call being connected to the mobile terminal through the wireless network such that the transition of the call takes place during the call (Appeal Brief filed November 28, 2006, pp. 4-5 and 10-13).

3. Misapprehension of Teachings of Abidi as Applied to Relevant Claim Language

The BPAI also relied on findings of fact that are incorrect. In particular, the BPAI misapprehended the teachings of Abidi. For example, the BPAI alleged that Abidi discloses that when the mobile terminal moves within range of the wireline cordless base station, a call having the primary directory number is routed to the directory number of the wireline cordless base station and that the directory number of the wireline cordless base station then becomes the temporary directory number for the mobile station. Appellant disagrees. As stated in the present application, the temporary directory number of the present invention is provided by the wireless network (Specification, paragraph 0005). The BPAI acknowledged this teaching of the present invention (Decision, p. 2, “a temporary directory number for the mobile terminal is provided by the wireless network”). Abidi does not teach or suggest such a temporary directory number. The directory number of the wireline cordless base station in Abidi cannot be the claimed temporary directory number because it is not provided by the wireless network. As the name suggests, the directory number of the wireline cordless base station is associated with the wireline network and is not provided by the wireless network.

The BPAI also ignored the plain meaning of the claim language. First, claim 1 recites that the control system is adapted to “initiate a transition of the first call being connected to the mobile terminal through the wireline network via the local wireless interface to the first call being connected to the mobile terminal through the wireless network using a temporary directory number.” Thus, the call is transitioned from being connected to the mobile terminal through the wireline network via the local wireless interface to the first call being connected to the mobile terminal through the wireless network using the temporary directory number. Second, this transition in the claimed invention occurs after the mobile terminal is detected to be moving out of the communication zone during the call. When the plain language of the claim is considered,

Abidi does not teach that the transition of the call occurs during the call. Abidi also does not teach initiating the transition of the first call being connected to the mobile terminal through the wireline network via the local wireless interface to the first call being connected to the mobile terminal through the wireless network using the temporary directory number.

First, in Abidi, the first call is not transitioned after it is established. Instead, in Abidi, when the wireline cordless base station senses the mobile station is within range, it initiates a short call to inform the HLR so that calls having the directory number of the mobile station are routed to the directory number of the wireline cordless base station (Abidi, col. 3, line 63 through col. 4, line 6). Then when a call is made to the directory number of the mobile station, the call is routed through the PSTN to the wireline cordless base station using the directory number of the base station (Abidi, col. 4, lines 7-15). For that call, the call is always established through the cordless base station; no transition of that particular call is made. When the mobile station moves out of the range of the wireline cordless base station, the cordless base station places a short call to the HLR canceling the registration and future calls are routed to the mobile station using the directory number of the mobile station (Abidi, col. 4, lines 30-39). There is no teaching in Abidi of a transition of a first established call. Abidi simply does not disclose establishing a first call through the wireline network and then transitioning that first call such that the first call is connected through the wireless network using the temporary directory number. Instead, Abidi merely discloses that when the mobile station is within range of the wireline cordless base station, the call is routed to the cordless base station using the wireline directory number of the base station. A call is not first established and then transitioned. Thus, Abidi does not teach each and every element of the claimed invention for this reason.

In addition, the directory number of the wireline cordless base station in Abidi cannot be the claimed temporary directory number. First, as discussed above, the temporary directory number of the present invention is provided by the wireless network (Specification, paragraph 0005). The directory number of the wireline cordless base station in Abidi is associated with the wireline network and is not provided by the wireless network, and thus cannot be the claimed temporary directory number. Second, the wireline directory number of the cordless base station in Abidi is not used to “initiate a transition of the first call being connected to the mobile terminal through the wireline network via the local wireless interface to the first call being connected to the mobile terminal through the wireless network,” as recited in claim 1, and thus

cannot be the claimed temporary directory number. There is no transition of a first call in Abidi. When the mobile station moves out of the range of the cordless base station, the cordless base station in Abidi cancels the registration of the mobile station at the wireline cordless base station and calls are then routed to the directory number of the mobile station. The wireline directory number of the cordless base station is not used to cancel the registration. Thus, the wireline directory number of the cordless base station is not used in initiating a transition of the first call being connected to the mobile terminal through the wireline network via the local wireless interface to the first call being connected to the mobile terminal through the wireless network, as claimed in the present invention. Accordingly, Abidi does not teach each and every element of the claimed invention for this additional reason.

To the extent that the BPAI is relying or wishes to rely on the teachings of Schellinger in combination with Abidi, Appellant refers to, and incorporates by reference, its arguments in the Appeal Brief that Schellinger, alone or in combination with Abidi, does not teach or suggest a control system adapted to “initiate a transition of the first call being connected to the mobile terminal through the wireline network via the local wireless interface to the first call being connected to the mobile terminal through the wireless network using a temporary directory number,” as recited by the claimed invention (Appeal Brief, pp. 4-5 and 9-13).

In short, the references individually do not teach or suggest the temporary directory number recited in claim 1. In particular, the references, alone or in combination, do not teach or suggest a control system adapted to “initiate a transition of the first call being connected to the mobile terminal through the wireline network via the local wireless interface to the first call being connected to the mobile terminal through the wireless network using a temporary directory number,” as recited in claims 1 and 22 of the present invention. Since the references individually do not teach or suggest the claim element, the combination of references cannot teach or suggest the claim element. Since the combination does not teach or suggest each and every claim element, claim 1 is allowable.

Claims 2-21 depend from claim 1 and are not obvious for at least the same reasons. Claims 23- 40 depend from claim 22 and also are not obvious for at least the same reasons.


C. Conclusion

Appellant requests a rehearing pursuant to 37 C.F.R. § 41.52 and M.P.E.P. § 1214.03 following the decision issued on April 17, 2008 by the Board of Patent Appeals and Interferences. The BPAI misapprehended or overlooked several points, including, but not limited to, the scope of the present invention, the language of the claims, and the teachings of the cited references. In fact, the BPAI sustained the obviousness rejections of the Examiner on new grounds, or at the very least, affirmed the Examiner's rejections based solely on the Abidi reference instead of the combination of Abidi and Schellinger, as asserted by the Examiner, such that Appellant never had a fair opportunity to address the argument made by the BPAI that Abidi taught or suggested all of the elements of the claimed invention.

The Patent Office and BPAI has failed to establish *prima facie* obviousness. The claims of the present invention recite initiating a transition of the first call being connected to the mobile terminal through the wireline network via the local wireless interface to the first call being connected to the mobile terminal through the wireless network using a temporary directory number. The combination of Abidi and Schellinger does not teach or suggest using a temporary directory number as recited in the claimed invention. In particular, Abidi does not teach or suggest a control system adapted to “during the first call, detect the mobile terminal moving out of the communication zone” and adapted to “initiate a transition of the first call being connected to the mobile terminal through the wireline network via the local wireless interface to the first call being connected to the mobile terminal through the wireless network using a temporary directory number,” as claimed in the present invention. Schellinger also fails to teach or suggest these limitations (see Appeal Brief filed November 28, 2006, pp. 4-5 and 9-13). Thus, Abidi, alone or in combination with Schellinger, does not teach or suggest each and every element of the claimed invention.

For these reasons and based on the arguments presented above, Appellant requests a rehearing and reconsideration of the appeal brief, and requests that the Board reverse the Examiner and instruct the Examiner to allow all pending claims.

Respectfully submitted,
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